

Laxman Sharma Vs. Balrum Sharma and Anr

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Court : Jharkhand

Decided On : Feb-25-2015

Appellant : Laxman Sharma

Respondent : Balrum Sharma and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No. 1425 of 2012
Laxman Sharma, son of Sri Raj Kumar Sharma, resident of Holding No. 351, Bhuiyadih, Kalindi Basti, P.O. & P.S. Sitaramdera, Town Jamshedpur, Singhbhum East Petitioner Versus 1. Balrum Sharma, son of late Raj Kumar, resident of Holding No. 351, Bhuiyadih, Kalindi Basti, P.O. & P.S. Sitaramdera, Town Jamshedpur, Singhbhum East 2. Meghu Sharma, son of late Raj Kumar, resident of Holding No. 351, Bhuiyadih, Kalindi Basti, P.O. & P.S. Sitaramdera Town Jamshedpur, DistrictSinghbhum East. ... Respondents CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner : Mr. Ayush Aditya, Advocate Mr. Shashank Shekhar, Advocate For the Respondent No. 1 : Mr. P.A.S. Pati, Advocate 05/25.02.2015 Aggrieved by order dated 14.06.2011 in Eviction Suit No. 112 of 1997, the present writ petition has been filed.

2. It is stated that initially the suit being Title Suit No. 170 of 1997 was filed by the respondent no. 1. The defendant (petitioner herein) is the full brother of the plaintiff. The plaintiff claimed that his father has executed giftdeed in his favour and thus, he became owner of the property in question. The Title Suit No. 170 of 1997 was converted into an eviction suit bearing Eviction Suit No. 112 of 1997.

Subsequently, vide order dated 19.01.2001, the plaintiff was again permitted to convert the eviction suit into a title suit however, the plaintiff did not take any step in the matter for correction in the cause title and amendment in the plaint. The 2 defendant (petitioner herein) has also preferred Title Suit No. 94 of 1999 and he preferred an application for analogous hearing of both suits which was dismissed by the Trial Court vide order dated 15.09.2005. The petitioner approached this Court in W.P.(C) No. 6239 of 2005 which was dismissed on the ground that both suits are different in nature and therefore, cannot be heard together. The petitioner again moved an application for examination of the signature of his father on the alleged giftdeed and the said application was also dismissed by the Trial Court against which the petitioner came to this Court by filing W.P.(C) No. 1547 of 2009. The said writ petition was dismissed vide order dated 17.08.2010 taking note of order dated 17.02.2006 in W.P.(C) No. 6239 of 2005 however, it was ordered that both the suits would be tried one after another. 3. The learned counsel for the petitioner submits that in the aforesaid facts, the petitioner preferred application dated 18.12.2010 for dismissal of Eviction Suit No. 112 of 1997 however, the said application has erroneously been dismissed vide order dated 14.06.2011. It is submitted that the Trial Court in the impugned order dated 14.06.2011 recorded a finding that no material establishing landlordtenant relationship has been brought on record and once such finding has been recorded by the Court itself, in exercise of power 3 under Section 151 CPC, the Trial Court was under a duty to dismiss the suit. Relying on a judgement in Temple of Thakur Shri Mathuradassji, Chhota Bhandra Vs. Kanhaiyalal & Others, reported in AIR 2008 (NOC) 1259 (Raj), the learned counsel for the petitioner submits that even though application dated 18.12.2010 was filed under Section 151 CPC, the Court has power to pass order dismissing the suit. 4. As against the above, Mr. P.A.S. Pati, the learned counsel appearing for the respondent no. 1 plaintiff submits that there is a specific provision under Order VII Rule 11 CPC which provides for rejection of plaint and therefore, the application filed under Section 151 CPC was not maintainable. Since, there is specific provision under the Code of Civil Procedure for dismissal of suit, the Trial Court has rightly not exercised power under Section 151 CPC.

5. From the materials brought on record, it appears that vide order dated 19.01.2001 the Trial Court permitted the plaintiff to convert the Eviction Suit No.

112 of 1997 into a title suit. This order was never challenged by the defendant and it attained finality. Though, the petitioner did not take necessary steps for amending the plaint however, the fact remains that the Court in seisin of the suit filed by the plaintiff has to decide the claim of the plaintiff with respect to the suit scheduled property in reference to the giftdeed executed by 4 his father. The contention of the learned counsel for the petitioner that the Trial Court has recorded that from bare reading of the plaint, it appears that in the plaint it is nowhere mentioned that there is relationship of landlord and tenant between the parties and therefore, the Trial Court should have dismissed the eviction suit on this ground alone, does not merit acceptance. The observation of the Trial Court in impugned order dated 14.06.2011 is only a tentative observation and it cannot be construed as the final determination in so far as, the landlordtenant relationship between the parties is concerned. Although in the title suit there cannot be an occasion for deciding the said issue, even if it is assumed that the suit filed by the plaintiff has remained an eviction suit only, the issue of landlordtenant relationship has to be decided by the Court. It does not appear from the impugned order dated 14.06.2011 that the defendant led evidence in support of his claim that there is no landlordtenant relationship between the parties. Further, the defendant has taken a plea that the giftdeed is forged and fabricated document and therefore, I am of the definite opinion that the Trial Court could not have arrived at a conclusive finding that there was no landlordtenant relationship between the parties. Further, in view of order dated 01.05.2001 whereby, the eviction suit has been 5 permitted to be converted into a title suit, the observation of the Trial Court is of no consequence. It is wellsettled that if there is a specific provision in the Code of Civil Procedure which lays down a procedure for dismissal of suit, the Trial Court cannot exercise power under Section 151 CPC for dismissing the suit. The power under Section 151 CPC is the inherent power of the Court which can be exercised only for preventing abuse of the process of law and for avoiding miscarriage of justice. In Shipping Corpn. Of India Ltd. Vs. Machado Bros., reported in (2004) 11 SCC 168, the Hon'ble Supreme Court has observed as under :

20. it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent

the abuse of the process of court. Therefore, the court exercising the power under Section 151 CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

6. In *Vinod Seth v. Devinder Bajaj* reported in (2010) 8 SCC 1, the Hon'ble Supreme Court has observed as under : 28. As the provisions of the Code are not exhaustive, Section 151 is intended to apply where the Code does not cover any particular procedural aspect, and interests of justice require the exercise of power to cover a particular situation. Section 151 is not a provision of law conferring power to grant any kind of substantive relief. It is a procedural provision saving the inherent power of the court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the court. It cannot be invoked with reference to a matter which is covered by a specific provision in the Code. It cannot be exercised in conflict with the general scheme and intent of the Code. It cannot be used either to create or recognise rights, or to create liabilities and obligations not contemplated by any law.

7. The judgment in *Temple of Thakur Shri Mathuradassji, Chhota Bhandra* case has been delivered in the peculiar facts of the case and it does not lend support to the case of the petitioner. The application filed by the petitioner is not only misconceived, it is completely incoherent and inconsistent. There is no allegation that the eviction suit is frivolous . In the result, the writ petition is dismissed. Accordingly, I.A. No. 1364 of 2014 also stands disposed of. (Shree Chandrashekhar, J.) *Satyarthi/A.F.R.*

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